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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 701.

IN THE MATTER OF BUDDY LYNN WHITTINGTON.

ON WRIT OF CERTIORARI
FROM THE COURT OF APPEALS OF OHIO,
FAIRFIELD COUNTY.

BRIEF OF THE NATIONAL COUNCIL OF JUVENILE COURT JUDGES AS AMICUS CURIAE.

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BRIEF OF THE NATIONAL COUNCIL OF JUVENILE COURT JUDGES AS AMICUS CURIAE.

INTEREST OF AMICUS CURIAE.

The National Council of Juvenile Court Judges numbers among its members somewhat in excess of one thousand judges exercising juvenile court jurisdiction. Its members handle nearly ninety percent of the juvenile cases which are filed each year. The National Council is keenly sensitive to the impact of this Court's decisions upon proceedings in the juvenile courts, and the practical problems of administration of justice which arise from those decisions.

The National Council therefore offers this brief as *amicus curiae*. Written consent to the appearance of the Council as *amicus curiae* has been obtained from the attorneys for both parties and is on file with the Clerk.

The National Council of Juvenile Court Judges does not intend by this brief to defend the actions of the courts below.

Much of the difficulties arise under the peculiar provisions of the Ohio statute covering waiver to the criminal

court, § 2151.26 Ohio Rev. Code (Baldwin, 1964). We are informed that there is sharp disagreement among the Judges of Ohio about the requirements of this statute and that an attempt will be made to have it amended at the next session of the Ohio General Assembly.

The shameful confinement of the appellant is contrary to the standards prescribed in the Guides for Juvenile Court Judges promulgated by the National Council many years ago and cannot be condoned. We do not seek by our arguments in this brief to excuse it, but we cannot undo it, however strong our desires to do so may be.

STATEMENT OF THE CASE.

The facts of the case are in considerable dispute. They are stated in detail, in three varying versions, in the briefs of the appellant, in the brief of the appellee and in the opinion of the Court of Appeals of Fairfield County, Ohio. It would serve no useful purpose either to repeat them, or to try to present another version of them, since they are in themselves of no great consequence.

SUMMARY OF ARGUMENT.

1. It is obvious from the record that the Juvenile Court was holding part of a preliminary hearing to determine whether or not to waive jurisdiction to the criminal court, under the Ohio statute governing such proceedings. This statute is inartfully drawn, and by its ambiguity probably caused the unnecessary and erroneous finding of delinquency which appears in the journal entry, but not in the court's findings expressed orally at the conclusion of the hearing. The statute must be construed to make it enforceable and to effectuate its purpose. This requires that the case be remanded to the trial court with instruc-

tions to delete the erroneous finding of delinquency, and to proceed in accordance with the statute and the rule in *Kent v. United States,* rather than considering the errors complained of by appellant, which do not exist when the record is considered in the light of what the proceedings actually were.

2. The constitutional requirement of equal protection of the law does not forbid a proper legislative classification of persons or things subject to the law. The only requirement is that the classification be a reasonable one in relation to the persons or things classified, and the object to be accomplished by the legislation. Legal precedents stretching back to the dawn of time, and a proper recognition of the biological realities of human growth and development establish beyond question that the classification which establishes procedures for the processing and treatment of juveniles separately from adults is reasonable, and hence constitutional.

3. The problem of the quantum of proof required to find a child delinquent on the ground that he committed an act which was a violation of law does not appear to be of constitutional dimensions. Appellant's contention that the finding should be based on proof beyond a reasonable doubt is not supported by any decision of this Court that that degree of proof is constitutionally required even in criminal cases. The general rule in the juvenile court has long been that followed by the appellate court in this case, but if the general rule be wrong, then it is more appropriate to apply the highest degree of proof required in chancery cases, rather than criminal cases. Chancery courts have had jurisdiction over children in trouble for more than three centuries, while the criminal rule of proof beyond a reasonable doubt is based on traditions no more than two centuries old. If an impermissible standard of

proof was followed by the courts below, comity requires that the case be remanded to them for review, rather than this Court weighing the evidence and rendering a final decision.

4. (A) The contention that the statutory provision for pre-trial investigation by the court's probation department automatically biases the judge overlooks the fact that an arm of the court is both legally and practically different from the court itself. A complete interdiction of any pre-trial investigation of delinquency complaints would put children at the mercy of any person motivated by malice, hostility, or mental derangement who chose to file complaints against them. Complaints, however unfounded, could only be determined by trial. Nor is the person who conceives that the court is biased by pre-trial investigation in a particular case without remedy, since he can timely file an affidavit of prejudice and have the judge disqualified.

(B) In addition to the fact that the right to a jury is not constitutionally protected in the state courts by the Sixth and Fourteenth Amendments, and that most state legislatures have not thought it to be consistent with juvenile court philosophy, it does not follow that a juvenile's rights will be any more safeguarded with a jury as fact-finder instead of the judge. Certainly the court as a finder of fact meets the *Gault* test of "essentials of due process and fair treatment," and the introduction of a jury as the finder of fact would greatly diminish the probabilities of successful rehabilitative treatment.

5. There ought to be no issue of bail presented by the record in this case. The Ohio Juvenile Code contemplates that detention of a child is to be the exception rather than the rule, and in essence is very similar to the provi-

sions of the federal Bail Reform Act. Although the Juvenile Court has considerable discretion with respect to detention, there are ample guidelines to determine whether or not that discretion has been properly exercised. Remedies are available where discretion has been improvidently exercised. Bail provisions would be inadequate to protect either the interests of the child or society, because the real question is not whether the child should be in custody, but in whose custody should he be.

ARGUMENT.

Many of the appellant's contentions involve minor and technical points which, although interesting in themselves, are not particularly important to juvenile court operations. The appellant's approach seems to be such that it is difficult to separate the fundamental constitutional problems from the merely technical or procedural ones. We shall, however, attempt to do so, in order that the technicalities may be left to the arguments of counsel for the parties, leaving only questions of major importance to be treated in this argument.

I. THE PROCEEDINGS IN THE TRIAL COURT WERE NOT AN ADJUDICATORY HEARING, BUT PART OF A PRELIMINARY HEARING ON WAIVER TO THE CRIMINAL COURT, AND HENCE DO NOT EXHIBIT THE ERRORS COMPLAINED OF.

The National Council of Juvenile Court Judges contends that a proper understanding of the nature of the proceedings in the Fairfield County Juvenile Court would preclude any determination of the constitutional defects alleged by appellant.

It is obvious from the nature of the alleged offense, the record, and the juvenile court's journal entry that the

case was considered under the provisions of Section 2151.26 Ohio Revised Code, which reads as follows:

> "In any case involving a delinquent child under sections 2151.01 to 2151.54, inclusive, of the Revised Code, who has committed an act which could be a felony if committed by an adult, the juvenile judge, after full investigation and after a mental and physical examination of such child has been made by the youth commission, or by some other public or private agency, or by a person qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety, subject to the approval of the judge, for his appearance before the court of common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in such sections in disposing of such case."

The language of this statute is very similar to that of the District of Columbia statute referred to in *Kent v. United States,* 383 U. S. 541 (1966). It is clear from the language of the Juvenile Court Judge (R. 240) that he was conducting a waiver hearing. The Judge said,

> "The court finds that there has been a crime committed here, that there has been a homicide committed on this alleged victim; and the court finds that there is probable cause to believe that this young defendant may have done this act, which, if done by an adult, would be a felony. And, at this time, it is the order of the court that the boy be examined, physical and mental examination be made of such child, by the Bureau of Juvenile Research, called the Diagnostic Center of the Youth Commission."

This language is not a finding of delinquency, although it is a sufficient finding of fact upon which to predicate a waiver of the Juvenile Court's jurisdiction to the

criminal court, if the other elements necessary to waiver exist. We contend that the basic error in this entire proceeding is that the formal journal entry which recites that Buddy Lynn Whittington "is a delinquent child as set forth in the complaint" does not correspond with the Judge's finding as expressed in the record. The finding of delinquency is incompatible with the remainder of the entry, which clearly indicates the court's intention to consider waiving jurisdiction to the criminal court.

Under Section 2151.26 Ohio Revised Code, the juvenile court judge has the alternatives of binding the child over to the grand jury for indictment and trial as an adult criminal, or retaining jurisdiction and disposing of the case as a juvenile court case. The order before this Court does neither, nor does the record show what disposition, if any, has been made of the matter.

Section 2151.26 Ohio Revised Code is inartfully drawn, and its very ambiguity probably occasioned the unnecessary and erroneous finding of delinquency in the journal entry. The statutory words "In any case involving a delinquent child" suggests to many judges that there *must* be a finding that the child is delinquent before the juvenile court can waive jurisdiction to the criminal court. Obviously, the Legislature could not have intended this, for a finding of delinquency determines the child's guilt in the juvenile court, and thus obviates or bars a trial in the criminal court. The manifest intention of the Legislature is thus contrary to the construction requiring a finding of delinquency as a prerequisite to waiver to the criminal court.

The statute, Section 2151.26 Ohio Revised Code, must be construed in such a manner as to make it enforceable and to effectuate the apparent purpose and intent of the Legislature. *United States v. Harriss,* 347 U. S. 612

(1953); *United States v. C. I. O.*, 335 U. S. 106 (1947); *Chippewa Indians v. United States*, 301 U. S. 358 (1937); *State v. Wells*, 146 Ohio St. 131, 64 N. E. 2d 593 (1945); *State ex rel. Attorney General v. Mulhern*, 74 Ohio St. 363, 78 N. E. 507 (1906). The juvenile court judge, proceeding under the statute thus construed, should not make a finding of delinquency, but should only find that there is probable cause to believe that the child had committed the felonious act complained of, and then proceed in compliance with the other provisions of the statute and in conformity with *Kent v. United States*, 383 U. S. 541 (1966).

We submit that this cause ought to be remanded to the Juvenile Court with instructions to strike from the journal entry the finding of delinquency, and to insert in lieu thereof the actual finding of the court that "there is probable cause to believe that Buddy Lynn Whittington has committed the act complained of" and for further proceedings according to law.

Under this disposition of the case, the constitutional questions as to quantum of proof, and jury trial are not presented. Since, however, these questions are of vital importance to the Juvenile Courts throughout the country, we desire to offer to this Court our arguments about them.

II. THE FACT THAT JUVENILE COURT PROCEDURES ARE CONSIDERABLY DIFFERENT FROM ADULT CRIMINAL PROCEDURES DOES NOT RESULT IN A DENIAL OF THE EQUAL PROTECTION OF THE LAW, FORBIDDEN BY THE FOURTEENTH AMENDMENT.

From the first page of the index of appellant's brief, it appears that in three of the four questions presented, appellant contends that he was denied the equal protection of the laws because the Ohio Juvenile Code provides for procedures which are substantially different from the provisions of the state's criminal code.

Both practically and legally, this is an argument so patently unsound that it ought to be sufficient merely to state it to show its unsoundness. Unfortunately, this type of argument and thinking is becoming so common that it perhaps requires some attention.

The decisions are legion that the constitutional requirement of equal protection of the law does not forbid a proper legislative classification of persons or things subject to the law. Many of these decisions deal specifically with the juvenile court statutes in different states. The leading decision, often challenged but still standing after more than sixty years, is *Fisher v. Commonwealth,* 213 Pa. 48, 62 A. 198, 5 Ann. Cas. 92 (1905). There the court says:

> "That minors may be classified for their best interests and the public welfare has never been questioned in the legislation relating to them. Under the act of 1887, the classification of females under 16 years of age means felonious rape, with its severe penalties for what may be done in one day, though on the next it remains simple fornication, to be expiated by a mere fine. * * * The genus homo is a subject within the meaning of the Constitution. Will it be contended that as to this there can be no classification? No laws affecting the personal and property rights of minors as

distinguished from adults? Or of males as distinguished from females? * * *"

This case holds specifically that the legislative classification which establishes different types of procedures for children and adults is constitutionally proper. The case discusses the problem in considerable detail, pointing out numerous other areas of legal classification in which persons of different ages, sexes, or occupations have different rights and duties, or are subject to different penalties or impositions.

The only constitutional requirement in the past has been that the classification be a reasonable one in relation to the persons or things classified, and the objects to be accomplished by the legislation.

In respect to the juvenile court laws, the reasonableness of the classification which separates children from adults ought to be clear upon its face, but in a society such as ours, in which the biological facts are blurred or obscured by poor thinking and improper social customs, perhaps it requires demonstration.

From time immemorial, legal codes have made distinctions between adults and children. The Code of Hammurabi, the earliest surviving body of laws, makes such provision. So does the Code of Justinian. *In re People on Behalf of Syson,* 184 Cal. App. 2d 111, 7 Cal. Rptr. 298 (1960). In England, from which our law derives, the Laws of Athelstane, in the Fourth Century, provided special treatment for children. Rappeport, *Determination of Delinquency in the Juvenile Court: A Suggested Approach,* 1958 Wash. U. L. Q. 123, 128.

Perhaps it would be justifiable to depart from precedents, even from a series of precedents so ancient in origin, if the reasons for them have ceased to exist, but the rea-

son for these precedents is presently as valid as it has ever been. As one author expressed it,

> "Some of the vociferous critics of the juvenile courts seem to forget what the wise parent knows, for example, that children really are not adults. They do not come to life fully equipped with knowledge and wisdom, like Minerva springing full-panoplied from the brow of Jove. They are not like insects which are hatched complete with all the instincts they need to complete their life cycle. On the contrary, human children start life completely helpless and must come to the rights and privileges of adulthood by slow degrees." [1]

It is not difficult to see in this failure to recognize that there is a real difference between children and adults the explanation of much of the difficulty which underlies our present problems of delinquency and youth crime. If a child is to be accorded all the rights and privileges of adulthood, what necessity is there for the child to mature? Adults who are themselves immature, children who have never had to grow up, are unable to lead their own children to maturity, in a vicious circle which is nowhere so apparent as in the juvenile courts.

There is further reason why the classification which makes constitutional the juvenile court laws must logically be permitted to stand. That reason is that if it is

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[1] Young, *The Constitution and the Juvenile Court—Letter or Spirit*, 44 J. Am. Jud. Soc'y 93, 97 (1960).

See also, Kennick, *Where Have We Gone Wrong?* THE BLADE, Toledo, Ohio, September 11, 1966, § G at p. 15, col. 4, which reads in part as follows:

> "Immaturity is the natural condition of childhood. Unfortunately, many modern parents have come to look upon this condition as bad. They cannot bear to see a child as a child. There is a growing social force which dictates that he must be turned into an adult right away * * *"

unconstitutional to provide separate procedures for children who are accused of crime, it is equally unconstitutional to place them under the disabilities of minority for any other purpose, since the same legal and factual basis underlies all classifications. The right to vote, the right to operate a motor vehicle, the right to marry, the right to purchase and use intoxicating beverages, the right to engage in any occupation, are all governed, in every state, and in the United States, by the factor of calendar age. Equally, the obligations of compulsory education and military service are governed by age.

Since this Court itself has recently recognized that it is proper to distinguish between children and adults, by referring to "the commendable principles relating to the processing and treatment of juveniles separately from adults," *In re Gault*, 387 U. S. 1, 19 (1967), and the child's right to be proceeded against in the juvenile court, *Kent v. United States*, 383 U. S. 541, 556, 557 (1966), we ask this Court to overrule the appellant's broad contention in his questions presented that the juvenile court statutes involved which are not identical with criminal statutes deny him the equal protection of the law.

III. JUVENILE COURTS SHOULD NOT BE HELD TO ANY HIGHER STANDARD OF PROOF THAN THAT OF CLEAR AND CONVINCING EVIDENCE IN THE ADJUDICATION OF DELINQUENCY.

Appellant contends that the courts below made a finding of delinquency against him using an impermissible standard of proof. His contention is that the juvenile court found that there was probable cause to believe that he committed the act and that the appellate court affirmed by applying the preponderance of the evidence test. It is argued that the delinquency must be established beyond

a reasonable doubt, or at a minimum, by "clear, unequivocal and convincing" evidence.

This Court's statement in *Kent*, reiterated in *Gault*, that it does not mean to indicate that the hearing held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing, hardly justifies an assumption that the adjudication must be based on the stringent criminal trial requirement of proof beyond a reasonable doubt. We are unaware of any type of administrative hearing in which so heavy a burden is imposed.

The Ohio Juvenile Code, in common with most juvenile codes, makes no specific provision concerning quantum of proof. The general rule in the past has been that an adjudication of delinquency may be based on a preponderance of the evidence. 31 *Am. Jur.* 2d, Juvenile Courts 339 (1967). The courts of Ohio have followed this rule when the question has arisen. *State v. Shardell*, 107 Ohio App. 338, 153 N. E. 2d 510 (1958); *In re Gibson*, 174 N. E. 2d 148, 150 (Ohio Juv. Ct. 1961).

The Supreme Court of Arizona, in the case of *Application of Gault*, 99 Ariz. 181, 407 P. 2d 760 (1965), considered this problem in some detail, and concluded that proof in delinquency cases should be by clear and convincing evidence. In reversing the decision of the Arizona court, this Court did not allude to or pass upon that problem, thus leaving the question open.

It is, of course, arguable that the factual situation here is considerably different from that presented in *Gault*. The Gault boy had been in previous difficulties, and was in fact still on probation at the time of the acts alleged to constitute delinquency, while in the present case, Buddy Lynn Whittington is shown by the record to have been a normal child of a normal family who had never been in

any previous difficulties. He was completely unknown to the court and the law. The police and school authorities had never been troubled or concerned by his activities. The only basis the court could have for adjudicating him delinquent would be that he had committed a single, isolated criminal act. Unhappily, in this case, that act, if appellant committed it, was extremely serious. Thus, the courts below could easily resist the temptation to follow the holding of the Supreme Court of Nebraska that a single act of law violation is not enough to make a child delinquent. *In re Sanders*, 168 Neb. 458, 96 N. W. 2d 218 (1959).

The problem here is whether it is possible to resist the opposite temptation, which is to say that if a single act of law violation is enough to make a child delinquent (and the statute[2] admits of no other construction) then that single act must be established beyond a reasonable doubt. The vast weight of authority is to the contrary. Does reason compel any different conclusion? We submit that it does not.

In the first place, it is very hard to draw a precise line between the various degrees of proof. Proof by a preponderance of the evidence is defined as that quantum of proof that has more convincing force, and produces in the mind of the trier of the fact belief that what is sought to be proved is more likely true than not true. Mathes & Devitt, *Federal Jury Practice and Instructions* 385 (1965). On the other hand, these same authors define proof beyond a reasonable doubt as being such as the trier of the fact would be willing to rely and act upon in the most important of his own affairs (Id. at 83). These are rather subtle differences at best.

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[2] Ohio Rev. Code § 2151.02(A) (Baldwin 1964).

This problem does not appear to be of constitutional dimensions. The appellant cites no case of this Court holding that the defendant in a criminal trial has a constitutional right to a finding of guilty beyond a reasonable doubt. The Ohio rule in criminal cases is a statutory one.[3]

The rule that a defendant must be found guilty beyond a reasonable doubt is said to be a development of the late 18th Century.[4] If the question is to be resolved by reference to rules that are based upon ancient traditions rather than specific constitutional provisions, then, we contend, some attention ought to be paid to the traditions giving separate and special treatment to children in trouble, alluded to previously in this brief, which far antedate the 18th Century.

The Chancery basis of Juvenile Court jurisdiction commenced in 1660 when the Court of Wards and Liveries was abolished. As early as 1722 it was expressly held that the court had jurisdiction over the children. *Eyre v. Shaftsbury*, 2 Peere Williams 103, 24 Eng. Repr. 659 (1722). The appellant insists that conformity to due process requirements should not be evaded by the device of characterizing proceedings as civil rather than criminal, an argument which might be applied with equal force to characterizing matters as legal or equitable. However, in all of the various manifestations of chancery jurisprudence, the highest degree of proof has been that of "clear and convincing" evidence. Can it be said that due process and fair treatment is not attained by accepting the highest degree of proof required by that branch of jurisprudence which since feudal times has been concerned with the protection of the rights of children?

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[3] Ohio Rev. Code § 2945.04 (Baldwin, 1964).

[4] 9 *Wigmore, Evidence* § 2497 (3 ed. 1940).

This Court, in dealing with this matter, should also give some attention to the view of the Children's Bureau of the Department of Health, Education, and Welfare, which endorses the chancery rule of "clear and convincing" proof.[5]

Appellant urges that the evidence against petitioner is constitutionally insufficient to uphold the judgment below, and argues that this Court should make its own evaluation of the evidence. In support of this contention, he cites *New York Times Co. v. Sullivan*, 376 U. S. 254 (1964). It is true that the Court can review the facts to determine if, as a matter of law, the party having the burden, has not met that burden. But in this case it cannot be said that, as a matter of law, the state has not proved its case by "clear and convincing" evidence. Thus, comity requires that this Court, if it finds that the Ohio courts have used an impermissible standard of proof, remand the case to the state courts for them to apply the proper standard.

IV. THE CONTENTION THAT PETITIONER WAS DENIED DUE PROCESS AND EQUAL PROTECTION BECAUSE HE WAS NOT AFFORDED A FAIR TRIAL BY AN IMPARTIAL TRIER OF FACT IS UNFOUNDED.

Appellant, in his brief, argues this contention in two parts, the first concerned with an alleged personal bias of the juvenile court judge, and the second with the denial of a jury trial. We will address ourselves to each of these contentions separately.

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[5] Children's Bureau, HEW, *Standards for Juvenile & Family Courts*, 72 (1966).

A. The Judge's Alleged Participation in the Investigatory and Accusatory Process.

Without going into the factual questions involved in the argument upon this point, we contend that the statutory provisions for pre-trial investigation by the Juvenile Court's probation department serve a useful and necessary purpose, and do not, as appellant seems to assume, automatically and inevitably create a bias on the part of the judge.

We do not agree that there is any real analogy between the rather vague provisions of the Ohio statutes concerning pre-hearing investigation and the contempt proceedings before a judge who was acting as a one-man grand jury, with which this Court was concerned in *In re Murchison*, 349 U. S. 133 (1955).

There is both a real and a legal distinction between actions taken by an arm of the court, such as a probation officer, and the court itself. To ignore this distinction, as appellant seeks to do in his argument, is to call into question all those cases in which the judge of a court which issues a search warrant or a warrant for arrest afterwards presides at the trial of the person searched or arrested. This procedure is common even in the District Courts of the United States.

It is true that the statutory provision for investigation by the probation department prior to trial[6] raises philosophical questions which are difficult. That the courts and bar of Ohio are aware of them is illustrated by the following comment:

> "To what extent the power of investigation is or should be used in the intake process is difficult to determine. It is almost impossible to find anything in

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[6] Ohio Rev. Code § 2151.14 (Baldwin, 1964).

> either case or text law bearing on the subject. Lawyers instinctively rebel at the idea of court investigations before hearing, seeing in them an improper combining of the functions of judge and prosecutor. The trend seems to be away from any use of the court's investigative powers until the jurisdictional facts have been established although the *Standard Juvenile Court Act*, Art. III § 12(1) [7] positively requires preliminary investigation in most cases. The Children's Bureau, in its publication *Standards for Juvenile and Family Courts* (Publication No. 437-1966) at pages 13 and 54 takes the traditional legal position against preliminary investigations designed to establish jurisdictional facts." [8]

Before accepting the appellant's contention that any investigation before trial is constitutionally impermissible, it is well to consider the other alternative, that the juvenile court must proceed to trial of every complaint alleging a child to be delinquent. If such is to be the law, then every complaint, however groundless, filed by a person motivated by malice, hostility, or mental aberration, must result in the child being brought before the court for a hearing. It is obviously impossible to tell from the face of the complaint whether or not it is baseless. Any holding that no employee of a juvenile court may make any preliminary examination without automatically biasing the court will in the end do harm out of all proportion to any benefits it may have.

This is particularly true because the party accused is not without remedy if there is any real reason to suppose that the court has actually been biased by any preliminary investigation. He can always file an affidavit of prejudice

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[7] 5 N. P. P. A. Journal 327, 351 (1959).

[8] Ohio Legal Center Institute, Reference Manual for Continuing Legal Education, Family Law 7, 14 (1967).

and seek a determination of the facts. However, it is too well established to require the citation of authority that one who claims the court is prejudiced must seek to disqualify the judge prior to trial. He cannot wait to determine the outcome of the hearing, and then, if it be not to his liking, seek to avoid it on the ground of prejudice.

We ask that this Court uphold the statutes of Ohio, and the provisions of the *Standard Juvenile Court Act*, and require that one who claims that any preliminary investigation by the court's probation department has prejudiced the court seek relief from such prejudice before, rather than after, hearing.

B. The Fact That the Juvenile Court Laws Do Not Grant the Right of Trial by Jury to Children Charged With Delinquency Should Not Be Held to Make These Laws Unconstitutional.

There is no justification for the contention, either in law or reason, that a juvenile is entitled to a jury trial on the question of his delinquency. The Sixth and Fourteenth Amendments to the United States Constitution do not give alleged youthful offenders in the state courts such a right, nor do the decisions of our courts. In the case of *Palko v. Connecticut*, 302 U. S. 319, 324-5 (1937), Justice Cardozo stated:

> "The Sixth Amendment calls for a jury trial in criminal cases and the Seventh for a jury trial in civil cases at common law where the value in controversy shall exceed twenty dollars. This court has ruled that consistently with those amendments trial by jury may be modified by a state or abolished altogether. *Walker v. Sauvinet*, 92 U. S. 90; *Maxwell v. Dow*, 176 U. S. 581; *New York Central Ry. Co. v. White*, 243 U. S. 188, 208; *Wagner Electric Mfg. Co. v. Lyndon*, 262 U. S. 226, 232.

> "The right to trial by jury and the immunity from prosecution except as the result of an indictment may have value and importance. Even so, they are not of the very essence of a scheme or ordered liberty. To abolish them is not to violate a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.' *Snyder v. Massachusetts,* 291 U. S. 97; *Brown v. Mississippi,* 297 U. S. 278; *Hebert v. Louisiana,* 272 U. S. 312."

It does not appear that this Court has held, subsequent to *Palko, supra,* that the right to trial by jury under the Federal Constitution is imposed upon the states by the Fourteenth Amendment. And more specifically, federal and state courts have consistently held that juveniles have no right to a jury in juvenile proceedings. In 1911 a federal court, in examining the Ohio juvenile act, determined that the act was not unconstitutional because it failed to provide for a jury trial. *Ex Parte Januszewski,* 196 Fed. 123 (C.C. S.D. Ohio 1911). And a later federal case, construing the Fourteenth Amendment due process clause, held that jury trial in state courts is not a federally protected right. *United States v. Cavell,* 294 F. 2d 12, 19 (3d Cir. 1961), cert. denied, 370 U. S. 945 (1962).

In so holding, the Circuit Court had a sound basis of legal precedent extending bac' over a century. As early as 1839 it was argued that statutes which authorized commitment and detention of an infant without jury trial were unconstitutional. This argument was rejected, the Supreme Court of Pennsylvania holding that:

> "as to the abridgment of indefeasible rights by confinement of the person, * * * we know of no natural right to exemption from restraints which conduce to an infant's welfare." *Ex Parte Crouse* 4 Whart. 9 (Pa. Sup. Ct. 1839).

More recently, the Ohio Supreme Court held that lack of a jury trial did not render the proceeding in a juvenile court violative of Sections 5 and 10 of Article I of the Ohio Constitution.[9] *In re Darnell,* 173 Ohio St. 335, 182 N. E. 2d 321 (1962). And the Superior Court of Pennsylvania, when confronted with a juvenile appellant's claim to a jury right, held that this right was not among the elements of due process which the United States Supreme Court has said must be afforded youthful offenders. *Commonwealth v. Johnson,* ____ Pa. Super. ____, 234 A. 2d 9 (1967).

Although *Kent v. United States,* 383 U. S. 541 (1965) and *In re Gault,* 387 U. S. 1 (1967), have introduced into the juvenile court some of the traditional trial court procedures and safeguards which adult defendants enjoy, it would be a fallacious interpretation of these cases to contend that this Court now requires juveniles to be treated exactly as adults. While the *Gault* decision did not address itself specifically to the question of right to jury trial for juveniles, there is language in the majority opinion to the effect that the Court did not intend to bring in all Sixth Amendment rights by implication along with those due process elements expressly enumerated. The Court quotes from its earlier opinion in *Kent, supra,* where it was said:

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[9] 5. Trial by jury.

"The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury."

10. Trial for crimes; witness.

"In any trial, in any court, the party accused shall be allowed * * * a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; * * *"

> "'We do not mean * * * to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment.' 383 U. S. at 562.
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> "We reiterate this view, here in connection with a juvenile court adjudication of 'delinquency,' as a requirement which is part of the Due Process Clause of the Fourteenth Amendment of our Constitution." 387 U. S. at 30.

The Court in *Gault* thus appears to be attempting a balance between the better aspects of juvenile and adult criminal procedure, and not obliterating all distinctions between the two.

Despite the fact that no federal decisions have held jury trials mandatory in juvenile proceedings, clearly the states have the right to utilize a jury as the finder of fact. However, most states have not seen fit to do so. In the Task Force Report on Juvenile Delinquency and Youth Crime, prepared as an augmentation to the 1967 general report of The President's Commission on Law Enforcement and Administration of Justice, it is stated at page 38:

> "Most States do not provide jury trial for juveniles. Even Illinois, New York, and California, which have recently revised their juvenile court laws to increase procedural safeguards for the child, have not extended the right to trial by jury. There is much to support the implicit judgment by these states that trial by jury is not crucial to a system of juvenile justice. As this report has suggested, the standard should be what elements of procedural protection are essential for achieving justice for the child without unduly impairing the juvenile court's distinctive values.
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> "As has been observed, 'A jury trial would inevitably bring a good deal more formality to the juvenile

court without giving the youngster a demonstrably better fact-finding process than trial before a judge.'" [quoting from Paulsen, *Fairness to the Juvenile Offender*, 41 Minn. L. Rev. 547, 559 (1957)].

When the unique functions of a juvenile judge are considered, it is apparent that the addition of a jury to the proceedings would substantially impair the court's effectiveness as a rehabilitative influence upon the children before it, as well as not affording a better fact-finding process. For the judge in a juvenile court is much more than a trier of fact. He has the delicate task of communicating and relating to the child, establishing rapport with him, so that the child will be receptive to the court's efforts in deterring an anti-social adult life, and will have his behavior patterns permanently altered. To inject twelve other adults into this precarious situation, lay people who are not even peers of the accused as they are in criminal trials of other adults, is unnecessarily to make more difficult a procedure which already presents complex problems.

V. THE EIGHTH AMENDMENT PROVISION FOR BAIL IN CRIMINAL ACTIONS DOES NOT EXTEND TO CHILDREN BROUGHT BEFORE THE JUVENILE COURT, AND SHOULD NOT BE EXTENDED TO SUCH MATTERS.

At the outset, it ought to be remembered that the Eighth Amendment provision with respect to bail is couched in rather negative terms, providing only that "Excessive bail shall not be required." It is at least arguable that this is not necessarily equivalent to a provision that persons are required in all circumstances to be admitted to bail.[10]

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[10] The Eighth Amendment is subject to various interpretations as to the extent to which it, unaided by statute, creates a

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Furthermore, the present matter, upon its facts, did it not involve a child, would be a capital offense, and at least from the basis of the statement of facts in the appellee's brief upon the motion for certiorari, the presumption is great. There ought, therefore, to be no issue of bail presented by the record in this case under the Constitution of the United States, or the law of Ohio.[11]

However, since one of the popular complaints about juvenile court procedures is the alleged absence of provisions for bail, there ought to be some consideration given to the matter. Actually, for reasons which will be set forth below, the question of the right of a juvenile to bail has been rarely raised. It is stated that there are only five reported cases dealing with this problem.[12] Two cases hold a child has a constitutional right to bail: *State v. Franklin,* 202 La. 439, 12 So. 2d 211 (1943); *Trimble v. Stone,* 187 F. Supp. 483 (D. D. C. 1960), only the latter of which was decided under the United States Constitution. Two cases hold a child does not have a constitutional right to bail: *State ex rel. Peaks v. Allaman,* 115 N. E. 2d 849 (Ohio App. 1952); *Ex parte Cromwell,* 232 Md. 305, 192 A. 2d 775 (1963). The fifth case is ambiguous, but holds the restraint of the child was "an improvident

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constitutional right to bail. See Foote, *The Coming Constitutional Crises in Bail,* 113 U. Pa. L. Rev. 959, 1125 (1965). The National Council of Juvenile Court Judges takes no position in this regard. Likewise we express no opinion as to whether the Eighth Amendment bail provision applies to state criminal proceedings through the Fourteenth Amendment. Our sole argument is that the Eighth Amendment should not require bail in all cases in juvenile courts as a matter of right.

[11] Article I, Section 9 of the Constitution of the State of Ohio provides in part as follows: "All persons shall be bailable by sufficient sureties, except for capital offences [sic] where the proof is evident, or the presumption great. * * *"

[12] National Council of Juvenile Court Judges, 561-2 Judge's Directory & Manual (1963).

exercise of the discretion vested in the court." *Application of Jacobsen*, 278 App. Div. 945, 104 N. Y. S. 2d 949 (1951).

The Ohio statutes with reference to the detention of juveniles pending hearing are fairly typical of juvenile court statutes generally. Section 2151.31 Ohio Revised Code provides in part as follows:

> "Whenever any officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the juvenile court, accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed. Thereupon such child may be released in the custody of a parent, guardian, or custodian. If not so released, such child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or to the place of detention designated by the court, and the officer taking such child shall immediately notify the court with a written report of the condition or situation which caused the child to be brought in and shall file a complaint when directed to do so by the court.
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> "In the case of any child whose custody has been assumed by the court, pending the final disposition of the case, the child may be released in the custody of a parent, guardian, or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released, such child, pending the hearing of the case, shall be detained in such place as shall be designated by the court, subject to further order.
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> "This section does not forbid any peace officer, police officer, probation officer, or other person authorized by the juvenile judge from taking into custody any child who is found violating any law or ordinance, or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals, or welfare. * * *"

It is quite clear that these statutes contemplate that detention shall be the exception, rather than the rule, and that the promise of those responsible for the care of the child, rather than bail, shall be relied upon to guarantee the child's appearance.

The Standard Juvenile Court Act, Article IV §§ 16, 17 and 18[13] makes somewhat more detailed provisions than those in the Ohio statute. The subject of detention of children is considered at length in the *Guides for Juvenile Court Judges*, published by the National Council on Crime and Delinquency. Chapter VII, pp. 42-48, sets up six classes of children who should be held in custody, and three classes of children who should be released. Thus, the courts are not without standards which can prevent arbitrary action.

It is true that under these provisions considerable discretion is granted to the Juvenile Court as to whether or not a child ought to be held in custody, but as *Application of Jacobsen, supra,* points out, there is a remedy for an abuse of this discretion. The National Council agrees with this Court's statement in *Kent* that the Juvenile Court Acts do not "confer upon the Juvenile Court a license for arbitrary procedure."[14] However, this is not a reason for taking away altogether the Juvenile Court's discretion in matters of detention. Practically, the Juvenile Court under these statutes possesses much the same discretion that is granted to the federal courts under the Bail Reform Act of 1966.[15] This Act resulted from the recognition of the harsh reality that the constitutional prohibition of excessive bail did not serve to prevent grave injustices.

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[13] 5 N. P. P. A. Journal, 327, 357 (1959).

[14] 383 U. S. 541, 553.

[15] 18 U. S. C. §§ 3141 et seq.

In summary, conceding the fact that appellant was treated unfairly in this case, this Court should not hold that there is a right to bail in juvenile court cases. There is no reason why a juvenile court in children's cases should have to go beyond what is required in adult criminal cases, and strong reason, apart from statutes, why the right to bail should not apply. The Ohio statutes and the *Guides for Juvenile Court Judges* provide more than adequate guidelines as to when a child should be released to the custody of his parents. Furthermore, Ohio Revised Code Section 2151.34 set forth the conditions under which a child may be detained. This statute even provides for detention in foster homes in lieu of a detention facility. Furthermore, the condition of the county jail, if detention there is required, is set forth by the statute.

The answer is not the strict criminal procedure of bail, which obviously makes no sense in juvenile court proceedings. Is a child entitled to be released on bail from the parent's custody? May a child, by the simple device of posting a bond, acquire the right to go where he pleases without let or hindrance?

A number of years ago, a learned writer on problems of Juvenile Court procedure expressed his views on bail as follows:

> "Obviously, bail ought not to be a *matter of right* in a juvenile case, not because the proceedings are civil rather than criminal in character but, more importantly, because a child in trouble may need care immediately, and that care is not provided by a simple release from custody. Discharge to parents will not be wise in every case because the parents may be the source of the child's difficulty. Of course some review of the decision to keep the child in detention ought to be available in the courts. The writ of habeas

corpus can accomplish the release of a boy or girl arbitrarily kept in custody before adjudication." [16]

Bail provisions are not adequate in juvenile court proceedings. The question regarding children is not whether they shall be in custody but in whose custody should they be placed. Of course, the parents should always be the first choice. But sometimes discharge to the parents would not be in the best interests of the child or the public. In these cases reasonable alternatives should be sought. The Ohio statute permits the court to designate another person than the parent. Furthermore, it can hold the child in a detention home for children, if the county has such a facility, or in a foster home. Requiring bail in juvenile cases would not be sufficient to safeguard the interests of the children involved nor of society.

VI. CONCLUSION.

As stated at the outset of this brief, The National Council of Juvenile Court Judges does not seek to defend the actions of counsel for the parties, or of the courts below, or to excuse the treatment accorded to the appellant. The record sets one's teeth on edge. Our only concern is that the constitutional issues presented should be resolved, not upon a narrow basis of attempting solely to correct or atone for the wrongs done during the course of this litigation, but in such a manner that clear guidelines will be established for the avoidance of future injustice to children in trouble, and to the public. To this end only the arguments presented herein are respectfully submitted.

MERRITT W. GREEN, ESQ.,
Counsel for Amicus Curiae.

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[16] Paulsen, *Fairness to the Juvenile Offender*, 41 Minn. L. Rev. 547, 552 (1957).

APPENDIX A.

CONSTITUTION AND STATUTES.

Article I, § 5 of the Ohio Constitution provides:

5. Trial by jury.

"The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

Article I, § 9 of the Ohio Constitution provides:

9. Bailable offenses; of bail, fine and punishment.

"All persons shall be bailable by sufficient sureties, except for capital offenses where the proof is evident or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted

Article I, § 10 of the Ohio Constitution provides in pertinent part:

10. Trial for crimes; witness.

"In any trial, in court, the party accused shall be allowed * * * a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; * * *."

The Bail Reform Act of 1966 provides in pertinent part:

18 U. S. C. A. § 3146. Release in noncapital cases prior to trial.

(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial

on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character

and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

18 U. S. C. A. § 3148. Release in capital cases or after conviction.

A person (1) who is charged with an offense punishable by death, or (2) who has been convicted of an offense and is either awaiting sentence or has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of section 3147 shall not apply to persons described in this section: *Provided,* That other rights to judicial review of conditions of release or orders of detention shall not be affected.

The Ohio Juvenile Court statutes provide in pertinent part (Ohio Revised Code):

Section 2151.02 "Delinquent child" defined.

As used in sections 2151.01 to 2151.54, inclusive, of the Revised Code, "delinquent child" includes any child:

(A) Who violates any law of this state, the United States, or any ordinance or regulation of a subdivision of the state, except as provided in section 2151.021 of the Revised Code;

(B) Who does not subject himself to the reasonable control of his parents, teachers, guardian, or

custodian, by reason of being wayward or habitually disobedient;

(C) Who is an habitual truant from home or school;

(D) Who so deports himself as to injure or endanger the morals or health of himself or others;

(E) Who attempts to enter the marriage relation in any state without the consent of his parents, custodian, legal guardian, or other legal authority.

Section 2151.14 Duties and powers of probation department; records; command assistance.

The chief probation officer, under the direction of the juvenile judge, shall have charge of the work of the probation department. The department shall make such investigations as the juvenile court directs, keep a written record of such investigation, and submit the same to the judge or deal with them as he directs. The department shall furnish to any person placed on probation a statement of the conditions of probation and shall instruct him regarding them. The department shall keep informed concerning the conduct and condition of each person under its supervision and shall report thereon to the judge as he directs. Each probation officer shall use all suitable methods to aid persons on probation and to bring about improvement in their conduct and condition. The department shall keep full records of its work, keep accurate and complete accounts of money collected from persons under its supervision, give receipts therefor, and make reports thereon as the judge directs.

The reports and records of the department shall be considered confidential information and shall not be made public. A probation officer may serve the process of the court within or without the county, and may make arrests without warrant upon reasonable information or upon

view of the violation of sections 2151.01 to 2151.54, inclusive, of the Revised Code, detain the person arrested pending the issuance of a warrant, and perform such other duties, incident to his office, as the judge directs. All sheriffs, deputy sheriffs, constables, marshals, chiefs of police, and other police officers shall render assistance to probation officers in the performance of their duties when requested to do so by any probation officer.

Section 2151.26. Child charged with felony.

In any case involving a delinquent child under sections 2151.01 to 2151.54, inclusive, of the Revised Code, who has committed an act which could be a felony if committed by an adult, the juvenile judge, after full investigation and after a mental and physical examination of such child has been made by the youth commission, or by some other public or private agency, or by a person qualified to make such examination, may order that such child enter into a recognizance with good and sufficient surety, subject to the approval of the judge, for his appearance before the court of common pleas at the next term thereof, for such disposition as the court of common pleas is authorized to make for a like act committed by an adult; or the judge may exercise the other powers conferred in such sections in disposing of such case.

Section 2151.31 Custody of child pending hearing; child may be fingerprinted.

Whenever any officer takes a child into custody, he shall, unless it is impracticable or has been otherwise ordered by the juvenile court, accept the written promise of the parent, guardian, or custodian to bring the child to the court at the time fixed. Thereupon such child may be released in the custody of a parent, guardian, or cus-

todian. If not so released, such child shall be placed in the custody of a probation officer or other person designated by the court, or taken immediately to the court or to the place of detention designated by the court, and the officer taking such child shall immediately notify the court with a written report of the condition or situation which caused the child to be brought in and shall file a complaint when directed to do so by the court.

In the case of any child whose custody has been assumed by the court, pending the final disposition of the case, the child may be released in the custody of a parent, guardian, or custodian, or of a probation officer or other person appointed by the court, to be brought before the court at the time designated. When not released, such child, pending the hearing of the case, shall be detained in such place as shall be designated by the court, subject to further order.

This section does not forbid any peace officer, police officer, probation officer, or other person authorized by the juvenile judge from taking into custody any child who is found violating any law or ordinance, or who is reasonably believed to be a fugitive from his parents or from justice, or whose surroundings are such as to endanger his health, morals, or welfare. No child shall be fingerprinted or permitted to be fingerprinted or photographed by any officer or other person holding him in custody without the consent of the judge. When the judge permits the fingerprinting of any child, the prints shall be taken on a civilian and not on a criminal card and shall be kept only in the civilian file. Provided that any child recognized to the court of common pleas, under section 2151.26 of the Revised Code, shall not be exempt from fingerprinting and photographing. In every such case the officer taking such child into custody shall immediately report

the fact to the court and the case shall then proceed as provided in sections 2151.01 to 2151.54, inclusive, of the Revised Code.

The Ohio statute providing for detention of children provides:

Ohio Rev. Code Section 2151.34 Place of detention for children; district detention homes.

No child under eighteen years of age shall be placed in or committed to any prison, jail, or lockup, nor shall such child be brought into any police station, vehicle, or other place where such child can come in contact or communication with any adult convicted of crime or under arrest and charged with crime; provided that a child fourteen years of age or older may, for good cause shown, and with the consent of the juvenile judge or a person designated by him, be placed in a place of detention for adults, but in a room or ward separate from adults. All children under eighteen years of age, when confined in such places of juvenile detention, shall not be detained for a period to exceed ninety days during which time a social history can be prepared to include court record, family history, personal history, school and attendance records, and such other pertinent studies and material as will be of assistance to the juvenile court in its disposition of the charges against such juvenile offenders.

Upon the advice and recommendation of the judge, the board of county commissioners shall provide, by purchase, lease, construction, or otherwise, a place to be known as a detention home, which shall be within a convenient distance of the juvenile court, and not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent, neglected children,

or juvenile traffic offenders may be detained until final disposition. Upon the joint advice and recommendation of the juvenile judges of two or more adjoining or neighboring counties, the boards of county commissioners of such counties shall form themselves into a joint board, and proceed to organize a district for the establishment and support of a detention home for the use of the juvenile courts of such counties, where delinquent, dependent, neglected children, or juvenile traffic offenders may be detained until final disposition, by using a site or buildings already established in one such county, or by providing for the purchase of a site and the erection of the necessary buildings thereon. Such county or district detention home shall be maintained as provided in sections 2151.01 to 2151.54, inclusive, of the Revised Code. In any county in which there is no detention home, or which is not served by such a district detention home, the board of county commissioners shall provide funds for the boarding of such children temporarily in private homes. Children who are alleged to be or adjudged delinquent, dependent, neglected, or juvenile traffic offenders, may, after complaint is filed, be detained in such detention home or certified foster homes until final disposition of their case. The court may arrange for the boarding of such children in certified foster homes or in uncertified foster homes for a period not exceeding sixty days, subject to the supervision of the court, or may arrange with any county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization to receive for temporary care children within the jurisdiction of the court.

In case a detention home is established as an agency of the court, or a district detention home is established by the courts of several counties as hereinbefore provided,

it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron in a non-punitive neutral atmosphere. The judge, or the directing board of a district detention home, may appoint a superintendent, a matron, and other necessary employees for such home and fix their salaries. During the school year, when possible, a comparable educational program with competent and trained staff shall be provided for those children of school age. A sufficient number of trained recreational personnel shall be included among the staff to assure wholesome and a profitable leisure-time activities. Medical and mental health services shall be made available to insure the courts all possible treatment facilities shall be given to those children placed under their care. In the case of a county detention home, such salaries shall be paid in the same manner as is provided by section 2151.13 of the Revised Code for other employees of the court, and the necessary expenses incurred in maintaining such detention home shall be paid by the county. In the case of a district detention home, such salaries and the necessary expenses incurred in maintaining such detention home shall be paid as provided in sections 2151.341 to 2151.3415, inclusive, of the Revised Code.

In case the court arranges for the board of children temporarily detained in such foster homes, or arranges for such board through any private certified organization, a reasonable sum to be fixed by the court for the board of such children shall be paid by the county. In order to have such foster homes available for service an agreed monthly subsidy may be paid and a fixed rate per day for care of children actually residing therein.

The Ohio statute providing for proof beyond a reasonable doubt in criminal cases provides:

Ohio Rev. Code Section 2945.04 Reasonable doubt.

A defendant in a criminal action is presumed to be innocent until he is proved guilty of the crime charged, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he shall be acquitted. This presumption of innocence places upon the state the burden of proving him guilty beyond reasonable doubt.

Reasonable doubt is defined as follows: "'It is not a mere possible doubt, because everything relating to human affairs or depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

In charging a jury the trial court shall state the meaning of presumption of innocence, and read said definition of reasonable doubt.